

**THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

	X	
	:	<b>Chapter 9</b>
<b>In re:</b>	:	<b>Case No. 13-53846</b>
<b>CITY OF DETROIT, MICHIGAN,</b>	:	<b>Hon. Steven W. Rhodes</b>
Debtor.	:	
	:	
	:	

**PETITIONERS ROBERT DAVIS' AND CITIZENS UNITED AGAINST CORRUPT  
GOVERNMENT'S EMERGENCY MOTION FOR CLARIFICATION OF THE  
COURT'S JULY 25, 2013 STAY ORDERS RELATING TO THE STATE COURT FILING  
OF A QUO WARRANTO ACTION AGAINST MIKE DUGGAN**

PETITIONERS, Robert Davis and Citizens United Against Corrupt Government, by and through their attorney, Andrew A. Paterson, submit this their, Emergency Motion for Clarification of the Court's July 25, 2013 Stay Orders Relating to the State Court Filing of A Quo Warranto Action Against Mike Duggan, and state as follows:

1. It is urgent that the Court address Petitioners Robert Davis' and Citizens United Against Corrupt Government's Emergency Motion for Clarification of the Court's July 25, 2013 Stay Orders As It Relates to the Filing of A Quo Warranto Action Against Mike Duggan, for the reason that Petitioners, by such state court action, seek to remove Mike Duggan from his taking the oath to the elected office of Mayor of the City of Detroit **prior to the term of such office commencing on January 1, 2014.**
2. On November 4, 2013, Petitioners:
  - i) Submitted an application to the Attorney General, pursuant to MCR 3.306(B)(3), requesting the Attorney General to institute *quo warranto*

proceedings against Respondent in this Court pursuant to MCR 3.306(B)(1)(a)&(b);

- ii) Such application was properly made pursuant to MCR 3.306(B)(3) and offered to provide any security deemed necessary to indemnify the state against all costs and expenses of the action;
  - iii) Such application outlined the factual basis for, and necessity of, instituting a *quo warranto* action against Respondent. (See, Petitioner's Quo Warranto Application to Michigan Attorney General, Bill Schuette, dated November 4, 2013, attached hereto as **Exhibit A**).
3. After a review of Petitioner's application (**Exhibit A**), on December 9, 2013, the Michigan Attorney General delivered his response to Petitioners, declining to file a *quo warranto* action against Respondent. (**See, Attorney General's letter responding to Petitioner's application for *quo warranto* attached hereto as Exhibit B**).
4. Petitioner has thusly followed the requirements of the Michigan Court Rules, and the statute therefore, governing the commencement of a *quo warranto* action seeking such writ. Petitioners, pursuant to MCR 3.306(B)(3)(b), desire to petition to and file with the Wayne County Circuit Court, their Application for leave to file a *quo warranto* complaint against Mike Duggan, seeking his removal from office of mayor **prior to his term commencing on January 1, 2014**.
5. Prior to filing any such action with the Wayne County Circuit Court against "*Mayor-Elect*" Mike Duggan, Petitioners are seeking this Court's clarification that their *quo warranto* action against "*Mayor-Elect*" Mike Duggan is not stayed by either of this Court's July 25, 2013 Stay Orders or any of the provisions of the Bankruptcy Act. As the Court may recall, counsel for the Debtor, from Miller Canfield, had expressed concern at the last hearing with Petitioners before this Court, as to whether or not

Mike Duggan, in his capacity as “*Mayor-Elect*” of the Debtor, is an “official”, “agent”, or “representative” that might be included within this Court’s July 25, 2013 Stay Order that Confirmed the Protections of the Bankruptcy Code and by this Court’s July 25, 2013 Stay Order that Extended the Chapter 9 Stay to Certain (A) State Entities, (B) Non Officer Employees and (C) Agents and Representatives of the Debtor. (**collectively referred to herein as “ July 25, 2013 Stay Orders”**)

6. As noted, Mike Duggan’s term of office commences **January 1, 2014**. Thus, Mike Duggan is not presently an “officer”, “representative” or “agent” of the City of Detroit and will not be until he takes office **on January 1, 2014**. Michigan law has so settled this issue. A candidate who was elected during an election is **not** an “officeholder” or “officer” until that individual’s term of office begins. This was specifically addressed by the Michigan Court of Appeals in a similar quo warranto case involving Petitioner Robert Davis. In *Davis v Chatman*, 292 Mich App 603, at p 623 (2011), the Michigan Court of Appeals held that an individual who was elected is **not** an “officeholder” or “officer” until that individual’s term of office begins. Thus, as with the defendant in *Davis*, Mike Duggan, under Michigan law, is not considered an “officer”, “representative”, or “agent” of the Debtor, the City of Detroit, until he assumes the duties of the office on January 1, 2014.
7. Petitioners’ Application for Leave to File A Quo Warranto Action (“**Petitioners’ Quo Warranto Action**”) against Mike Duggan does not qualify as a “claim” against the Debtor. Petitioners’ Quo Warranto Action against Mike Duggan does not seek any damages or an award of attorney fees or costs against the Debtor. Petitioners’ Quo Warranto Action does not name the Debtor as a party. Petitioners’ Quo

Warranto Action solely names Mike Duggan as an individual. **(See Petitioners' Quo Warranto Action (without exhibits) that they seek to file in the Wayne County Circuit Court attached hereto as Exhibit C).**

8. As the Court has previously informed the Petitioners and Debtor, unless an action is seeking to enforce a "claim" against the Debtor, such action is not subject to this Court's July 25, 2013 Stay Orders.
9. Petitioners' Quo Warranto Action, does not have Debtor or any of its departments, or the state's emergency manager, as parties; it has absolutely no impact whatsoever on the Debtor's Bankruptcy Petition or proceedings in this Court. Petitioners' Quo Warranto Action is simply a quo warranto action against "*Mayor-Elect*" Mike Duggan for allegedly, unlawfully usurping the office of Mayor of City of Detroit, as a direct result of his failing to meet the nomination requirements set forth in the 2012 Detroit City Charter, as amended. **(See Petitioners' Quo Warranto Petition that they seek to file in Wayne County Circuit Court (without exhibits) attached hereto as Exhibit C).**
10. Petitioners' Quo Warranto Action will not affect, in any way, or disturb, or otherwise impact the Debtor's Bankruptcy Petition, or proceedings thereunder, in this Court, or the Debtor's assets and property. Moreover, no discovery will be necessary to establish the elements of Petitioners' Quo Warranto Action. And, none of the Debtor's pertinent parties, e.g. Kevyn Orr, Emergency Manager, to the Bankruptcy Proceedings pending before this Court, will be affected, disturbed or interrupted in the performance of their duties. As this Court has recently determined, **only** Kevyn Orr, the Debtor's Emergency Manager, and not Debtor's elected officials, have the authority to manage and oversee the Debtor's bankruptcy.

11. Accordingly, this Court's July 25, 2013 Stay Orders do not, and should not apply to Petitioners' State Court Quo Warranto Action.
12. It is necessary for this Court to so clarify that its July 25, 2013 Stay Orders does not extend to Petitioners' State Court Quo Warranto Action.
13. Petitioners therefore respectfully requests that the Court so clarify that its July 25, 2013 Stay Orders do not extend to Petitioners' State Court Quo Warranto Action, and Petitioners are allowed to proceed to file such action in the Wayne County Circuit Court.

#### **NOTICE**

14. Notice of this Motion has been given to the City of Detroit's counsel of record, Attorney Stephen LaPlante, of Miller Canfield. Petitioners submit that no other or further notice need to be provided.

#### **CONCLUSION/PRAYER FOR RELIEF**

Petitioners, Robert Davis and Citizens United Against Corrupt Government, pray that the Court enter an order (a) clarifying that the Court's July 25, 2013 Stay Orders do not extend to Petitioners' State Court Quo Warranto Action they seek to file against Mike Duggan in the Wayne County Circuit Court; and (b) that Petitioners' may proceed to file their State Court Quo Warranto Action in the Wayne County Circuit Court for adjudication in an expeditious manner.

Respectfully submitted,

/S/ Andrew A. Paterson (P18690)  
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DATED: December 12, 2013